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E-filed: 2/26/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. CV-00-20905 RMW

ORDER REGARDING TWO PENDING
TRIAL MOTIONS

[Re Docket Nos. 3278, 3306]

RAMBUS INC.,
Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR
MANUFACTURING AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR, INC.,
SAMSUNG AUSTIN SEMICONDUCTOR,
L.P.,

NANYA TECHNOLOGY CORPORATION,
NANYA TECHNOLOGY CORPORATION
U.S.A.,

Defendants.

No. C-05-00334 RMW

[Re Docket Nos. 1321, 1345]

RAMBUS INC.,
Plaintiff,

v.

MICRON TECHNOLOGY, INC., and
MICRON SEMICONDUCTOR PRODUCTS,
INC.

Defendants.

No. C-06-00244 RMW

[Re Docket Nos. 928, 949]

This order addresses two outstanding trial motions requiring prompt resolution. The court has read the briefs filed by the parties and considered the arguments at both sidebar and in separate additional hearings.

I. FEBRUARY 2000 JEDEC BOARD OF DIRECTORS MINUTES

Rambus seeks to admit into evidence Trial Exhibit 6531, which Rambus argues is a set of JEDEC board of directors minutes from February 2000. The Manufacturers oppose the request, arguing first that Rambus has not authenticated the minutes and second that the minutes are hearsay without an applicable exception. The court disagrees as described below, and admits the document

1 into evidence.

2 **A. Authenticity**

3 Federal Rule of Evidence ("FRE") 901 requires the proponent of a document to make a
4 showing sufficient to support a finding that the document is what the proponent claims it is before
5 the document may be admitted. This is merely a *prima facie* showing, and the showing does not
6 need to be made by admissible evidence. *See* FRE 104(a). Indeed, it can be made by as little as a
7 showing that the documents were found in a party's possession. *E.g., Burgess v. Premier Corp.*, 727
8 F.2d 826, 835 (9th Cir. 1984). To be clear, if there is a dispute between which version of a
9 document is authentic, that dispute is for the jury to decide with its verdict, not the court with its
10 evidentiary rulings. *See United States v. Tank*, 200 F.3d 627, 630 (9th Cir. 2000).

11 Rambus has easily exceeded this threshold. The document in question was produced from
12 JEDEC's files. Under *Burgess*, that alone suffices. The minutes appear similar in format to other
13 copies of JEDEC minutes, of which the court has now seen a number. *See* FRE 901(b)(4). Rambus
14 has also provided pages of deposition testimony about the document from JEDEC's secretary and
15 EIA's general counsel which suggest that JEDEC only made changes to the minutes (thus creating
16 doubts about this set of minutes' authenticity) when the substance of the minutes came to light in
17 related litigation. Rambus has also provided evidence in the form of a copy of the minutes with the
18 secretary's proofreading corrections, where the corrections indicate typographical, but non-
19 substantive, changes to the portion of the minutes at issue. Finally, Rambus has presented a
20 selection of contemporaneous documents that vouch for the correctness of the disputed statement.
21 This body of evidence, taken in its entirety, is more than sufficient to support a finding that the
22 document in question is, in fact, a copy of the JEDEC board of directors minutes from February
23 2000. It also suggests that alterations to the minutes may have occurred only after the minutes came
24 up in litigation. *See Perry Decl.*, Ex. C at 43:2-44:23 (deposition testimony of John Kelly describing
25 Desi Rhoden's reaction to being confronted with the minutes).

26 **B. Records of Regularly Conducted Activities**

27 The Manufacturers next argue that the minutes are offered for the truth of the matter
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1 asserted, namely, their discussion of JEDEC's policy toward patent disclosure. The Manufacturers
2 argue that an insufficient foundation exists to support the application of the business records
3 exception. *See* FRE 803(6). Rule 803(6) requires testimony from a "qualified witness" that a
4 document be (1) made at or near the time of the events described in the minutes; (2) by a person with
5 knowledge; (3) kept in the course of regular business; (4) and made in the course of regular
6 business. *See id.* The court has discretion to exclude a business record if circumstances indicate a
7 "lack of trustworthiness." *Id.* A "qualified witness" can be any person familiar with an
8 organization's record keeping. *United States v. Ray*, 930 F.2d 1368, 1370 (9th Cir. 1990).

9 Rambus examined Ilan Krashinsky about this particular document at trial. Mr. Krashinsky, a
10 JEDEC representative (though not a board member) testified that he recognized them as JEDEC
11 board of director minutes. Tr. 2242:25-2245:2. He recognized the minutes as corresponding to a
12 meeting that took place in February 2000. *Id.* at 2245:3-5. While Mr. Krashinsky had not received
13 this particular set of minutes, *id.* at 2246:4-7, he said he did regularly receive JEDEC minutes in
14 similar form and appearance. *Id.* at 2246:13-2247:8. Further, other witnesses previously have
15 testified as to the way JEDEC minutes were prepared showing that JEDEC minutes meet the
16 requirements of Rule 803(6).

17 "Because of the general trustworthiness of regularly kept records and the need for such
18 evidence in many cases, the business records exception has been construed generously in favor of
19 admissibility." *Conoco Inc. v. Department of Energy*, 99 F.3d 387, 391 (Fed. Cir. 1996) (Bryson,
20 J.). In light of the policy values underlying the business records exception, the court finds that a
21 sufficient foundation exists in the trial record as it has developed to find that Exhibit 6531 is a record
22 of regularly conducted activities within the meaning of Rule 803(6).

23 Accordingly, Exhibit 6531 is admitted into evidence.

24 II. THE INFINEON LICENSE AND AMENDED LICENSES

25 Rambus seeks to introduce evidence of royalty rates contained in licenses it negotiated in
26 2000 to suggest that it did not breach JEDEC's policies because it offered reasonable and
27 nondiscriminatory licensing terms. The Manufacturers seek to introduce into evidence three further
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1 licenses: two amended agreements with Elpida and Samsung that changed the royalty rate following
2 developments in the Infineon litigation and the license with Infineon that arose from the settlement
3 of the *Infineon* litigation. Rambus seeks to exclude these further license agreements.

4 First, these additional licenses have little, if any, relevance to what a reasonable and
5 non-discriminatory royalty rate would have been assuming Rambus's patents are valid, infringed and
6 enforceable. The Infineon license was negotiated following a district judge's announcement that he
7 intended to dismiss Rambus's patent claims on the basis of spoliation of evidence. The resulting
8 royalty rate has no probative value on what a reasonable and non-discriminatory license rate was for
9 Rambus's technology. Similarly, the amended agreements with Elpida and Samsung were caused by
10 the district judge's now-reversed claim construction and the jury's now-reversed fraud verdict in the
11 *Infineon* litigation.

12 Second, even if these licenses had some probative value, FRE 403 concerns far outweigh it.
13 The evidence of what happened in *Infineon* would be unduly prejudicial to Rambus because this
14 court found that Rambus did not spoliage evidence, while the Federal Circuit reversed the claim
15 construction and jury verdict that gave rise to the license amendments. These conflicting outcomes
16 would also be confusing to the jury, and both sides would have to spend an inordinate amount of
17 time placing the *Infineon* litigation in context to attempt to dispel such confusion.

18 The Manufacturers argue that the evidence of the Infineon royalty rate is relevant in part to
19 rebut Rambus's argument that the Manufacturers have not paid anything to Rambus because they
20 want to use Rambus's technology for free. The Manufacturers submit that in light of Rambus's
21 comments about their failure to pay, they ought to be able to explain that given the rates in the
22 Infineon license, they would still be at a substantial competitive disadvantage if they accepted what
23 Rambus claims were reasonable and non-discriminatory royalty rates. This argument would have
24 some appeal if the Infineon license had been negotiated earlier. However, it was not negotiated until
25 March of 2005. Therefore, it seems doubtful that concern about being placed at a competitive
26 disadvantage *vis-a-vis* Infineon explains why the Manufacturers have failed to negotiate a license,
27 given that they knew of Rambus's patent claims for years prior to the *Infineon* settlement. More
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fundamentally, rebutting Rambus's argument regarding the Manufacturers' purported desire to use Rambus's technology for free is minimally relevant (it may go to causation). In light of the substantial Rule 403 concerns discussed above, the licenses cannot come in.

Accordingly, the court grants Rambus's motion to exclude evidence of Rambus's settlement agreement with Infineon and evidence of renegotiation of Rambus's other license agreements in light of the *Infineon* litigation.

DATED: 2/26/08



RONALD M. WHYTE
United States District Judge

Notice of this document has been electronically sent to:

Counsel for Rambus Inc., all actions		Counsel for Hynix entities, C-00-20905 and C-05-00334	
Burton Alexander Gross	Burton.Gross@mto.com	Allen Ruby	ruby@allenrubylaw.com
Carolyn Hoecker Luedtke	carolyn.luedtke@mto.com	Belinda Martinez Vega	bvega@omm.com
Catherine Rajwani	crajwani@sidley.com	Daniel J. Furniss	djfurniss@townsend.com
Craig N. Tolliver	ctolliver@mckoolsmith.com	Geoffrey Hurndall Yost	gyost@thelenreid.com
David C. Yang	david.yang@mto.com	Jordan Trent Jones	jtjones@townsend.com
Douglas A. Cawley	dcawley@mckoolsmith.com	Joseph A. Greco	jagreco@townsend.com
Erin C. Dougherty	erin.dougherty@mto.com	Kenneth Lee Nissly	kennissly@thelenreid.com
Gregory P. Stone	gregory.stone@mto.com	Kenneth Ryan O'Rourke	korourke@omm.com
Jennifer Lynn Polse	jen.polse@mto.com	Patrick Lynch	plynch@omm.com
Keith Rhoderic Dhu Hamilton, II	keith.hamilton@mto.com	Susan Gregory VanKeulen	svankeulen@thelenreid.com
Kelly Max Klaus	kelly.klaus@mto.com	Theodore G. Brown, III	tgbrown@townsend.com
Miriam Kim	Miriam.Kim@mto.com	Tomomi Katherine Harkey	tharkey@thelen.com
Peter A. Detre	detrepa@mto.com	Counsel for Micron entities, C-06-00244	
Pierre J. Hubert	phubert@mckoolsmith.com	Aaron Bennett Craig	aaroncraig@quinnemanuel.com
Rosemarie Theresa Ring	rose.ring@mto.com	David J. Ruderman	davidruderman@quinnemanuel.com
Scott L Cole	scole@mckoolsmith.com	Harold Avrum Barza	halbarza@quinnemanuel.com
Scott W. Hejny	shejny@sidley.com	Jared Bobrow	jared.bobrow@weil.com
Sean Eskovitz	sean.eskovitz@mto.com	John D Beynon	john.beynon@weil.com
Steven McCall Perry	steven.perry@mto.com	Leeron Kalay	leeron.kalay@weil.com
Thomas N Tarnay	ttarnay@sidley.com	Linda Jane Brewer	lindabrewer@quinnemanuel.com
William Hans Baumgartner, Jr	wbaumgartner@sidley.com	Rachael Lynn Ballard McCracken	rachaelmccracken@quinnemanuel.com
		Robert Jason Becher	robertbecher@quinnemanuel.com
		Yonaton M Rosenzweig	yonirosenzweig@quinnemanuel.com

Counsel for Nanya entities, C-05-00334		Counsel for Samsung entities, C-05-00334 and C-05-02298	
Chester Wren-Ming Day	cday@orrick.com	Ana Elena Kadala	anita.kadala@weil.com
Craig R. Kaufman	ckaufman@orrick.com	Claire Elise Goldstein	claire.goldstein@weil.com
Glenn Michael Levy	glevy@orrick.com	David J. Healey	david.healey@weil.com
Jan Ellen Ellard	jellard@orrick.com	Edward Robert Reines	Edward.Reines@weil.com
Jason Sheffield Angell	jangell@orrick.com	Matthew D. Powers	matthew.powers@weil.com
Kaiwen Tseng	ktseng@orrick.com		
Mark Shean	mshean@orrick.com		
Robert E. Freitas	rfreitas@orrick.com		
Vickie L. Feeman	vfeeman@orrick.com		

Counsel for intervenor, Texas Instruments, Inc., C-05-00334	
Kelli A. Crouch	kcrouch@jonesday.com
Counsel for intervenor, United States Department of Justice, C-00-20905	
Eugene S. Litvinoff	eugene.litvinoff@usdoj.gov
May Lee Heye	may.hey@usdoj.gov
Nathanael M. Cousins	nat.cousins@usdoj.gov
Niall Edmund Lynch	Niall.Lynch@USDOJ.GOV
Counsel for intervenor, Elpida Memory, Inc., C-00-20905 and C-05-00334	
Eric R. Lamison	elamison@kirkland.com
John J. Feldhaus	jfeldhaus@foley.com

Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program in each action.

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TSF
Chambers of Judge Whyte